

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9217 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

ALLARAKHA RAISINGHBHAI QURESHI

Appearance:

1. Special Civil Application No. 9217 of 2001
MR SAURABH J MEHTA for Petitioner No. 1
MR SIRAJ R GORI for Respondent No. 1
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/11/2001

ORAL JUDGEMENT

With the consent of the parties the matter is
taken up for final hearing today. By filing the present
petition the petitioner-corporation has challenged the

award passed by the Labour Court, Junagadh, in Reference (LCJ) No.1446 of 1990 [old No. Reference (LCR) No.266 of 1989]. By the impugned award the action of the ST Corporation in dismissing the employee from service was set aside and it was ordered that the respondent-workman should be reinstated in service with 20% back wages. The Labour Court also awarded costs of Rs.500.

2 The respondent was serving as a driver at the relevant time. He was subjected to departmental proceedings on the ground that he remained unauthorisedly absent from the duty for the period from 2.10.1987 to 12.10.1987; 8.6.1987 to 22.10.1987 and 19.10.1987 to 21.5.1988. After conclusion of the enquiry the respondent was removed from the service. The aforesaid order was challenged by the respondent-workman by raising the industrial dispute. The Presiding Officer of the Labour Court, by his order dated 23.6.2000 allowed the Reference and set aside the order of removal and passed award of reinstatement with 20% back-wages.

3 At the time of hearing it was argued by Mr Mehta, learned advocate for the petitioner that since the misconduct against the workman was proved, the Court should not have interfered with the order of punishment. He further submitted the concerned workman was serving as a driver and as a driver he was required to report for duty regularly. In view of the absenteeism on the part of the respondent-workman the Corporation suffered administrative difficulties and it disturbed the schedule of running the buses. He submitted that in any case the Labour Court should have inflicted appropriate punishment considering the misconduct of the respondent-workman.

4 Against the aforesaid argument, Mr Gori, learned advocate for the respondent-workman submitted that the respondent-workman was suffering from Tuberculosis at the relevant time and during the enquiry proceedings he had produced the medical certificate. He submitted that in view of the facts and circumstances of the case the order of Labour Court should not be interfered with. Mr Gori has relied upon the judgement of this Court reported in 1999 (1) GLH UJ 16. In the aforesaid case on account of absenteeism the employee was dismissed and he was reinstated in service with 25% back wages. The ST Corporation filed petition before this Court which was rejected by this Court confirming the award passed by the Labour Court. Mr Gori relying upon the said decision submitted that the present petition of the Corporation also be dismissed.

5 It is required to be noted that in the departmental enquiry the aforesaid misconduct of absenteeism was proved against the respondent-workman. It cannot be said that the departmental enquiry was vitiated in any manner. The Labour Court while exercising the powers under Section 11A of the Industrial Disputes Act, 1947, came to the conclusion that this is not a case in which such harsh penalty should be inflicted on the employee and accordingly the order of reinstatement with 20% back wages was passed. It is however required to be noted that the respondent was serving on the post of driver and this is not a case wherein on a particular day he remained absent but on various occasions in the past he remained absent without prior intimation. Even if the respondent-workman was suffering from any ailment, he should have informed about the same to the Corporation so that the Corporation could have made alternative arrangement.

6 In the facts and circumstances of the case, while confirming the order of reinstatement, punishment of stoppage of one increment without future effect is ordered to be imposed on the respondent. Considering the fact that the misconduct of the respondent was proved in the departmental enquiry, the order of 20% back wages passed by the Labour Court is set aside. The order of the Labour Court is modified to the following extent. The respondent-workman is entitled for reinstatement with stoppage of one increment without future effect and without back-wages. The Corporation is directed to reinstate the respondent-workman within two months from today. It is clarified that the respondent-workman will be entitled to the regular salary from the date of the award and whatever benefits that are required to be given to him will be given within a period of two months from today. It is also clarified that for all purposes the service of the respondent-workman should be treated as continuous and whatever increments that are required to be granted to the petitioner be granted.

7 In view of the aforesaid directions, this petition is partly allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

8 Mr Gori assures that the respondent-workman will serve the Corporation sincerely.

(P.B. Majmudar, J.)

(mohd)

